

S.B. Civil Writ Petition No.8283/2007
Balwant Singh & Anr.
VS
Om Prakash & Ors.

Date of order : 17.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.RS Choudhary,for the petitioners.

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Heard learned counsel for the petitioners.

It appears that the petitioners-defendants submitted an application under Order 11 Rule 12 CPC for discovery of documents, upon which, the plaintiffs-non-petitioners agreed that they will produce the relevant documents. On this statement, the trial court passed the order dated 23rd March, 2006 and directed the plaintiffs to produce the relevant books of accounts. The plaintiffs did not produce the said books of accounts then the defendants-petitioners again submitted an application on 20th Sept., 2006 and complained that plaintiffs have not produced the books of accounts and, therefore, direction may be issued to the plaintiffs to produce the books of accounts in court. Said application was dismissed by the trial court vide order dated 20th Nov., 2007 on the ground that plaintiffs stated that some of the books of accounts they have already shown to the counsel and rest of

the books of accounts are not in their power and possession. The trial court observed that in that situation, the petitioners-defendants may seek permission to produce secondary evidence and the trial court rejected the petitioner's application vide order dated 30th Nov., 2007, hence, this writ petition.

It is clear from the order dated 23rd March, 2006 that the court already passed the order for production of the documents against the plaintiffs-non-petitioners. Despite this order, if the plaintiffs have not produced the books of accounts then the procedure as provided under rest of the provisions under Order 11 CPC could have been followed and ultimately an application under sub-rule (1) of Rule 21 of Order 11 CPC could have been submitted, but the petitioners submitted the application for same relief, which was granted by the trial court vide order dated 23rd March, 2006.

Be that as it may be, it will be relevant to mention here that in case despite the order of the court dated 23rd March, 2006 if the plaintiffs-non-petitioners have not submitted the books of accounts then the defendants-petitioners may at appropriate stage request the court to draw adverse inference for non-production of the documents and also seek any relief and so far as further order for production of

the documents is concerned, the same could not have been obtained. So far as trial court's observation that the petitioners-defendants can seek permission to produce secondary evidence is concerned, that may be very much appropriate relief to the petitioners because of the reason that the petitioners can seek permission to produce secondary evidence only when other party failed to produce the documents and petitioners have the copies of the documents. If they possess the copies of the documents then they can certainly produce the copies of the documents. The trial court may pass appropriate order after the trial after taking into account all the facts of petitioners' moving application for production of the documents and court's order for production of document dated 23rd March, 2006 and therefore, I do not find any reason for interfering in the impugned order.

In view of the above, the writ petition of the petitioner is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-